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07 UNITED STATES DISTRICT COURT
08 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

09 IVAN BARASHKOFF,) CASE NO. C08-1121-JCC-MAT
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11 Petitioner,)
12)
13 v.) ORDER TO SHOW CAUSE
14)
15 CITY OF SEATTLE,)
16)
17 Respondent.)
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15 Petitioner, proceeding *pro se* and *in forma pauperis*, submitted a 28 U.S.C. § 2254 habeas
16 corpus petition. (Dkt. 1.) He seeks to challenge a April 4, 2008 conviction and sentencing.

17 However, it is apparent from the petition that petitioner has not yet exhausted his state remedies.

18 “An application for a writ of habeas corpus on behalf of a person in custody pursuant to
19 the judgment of a State court shall not be granted unless it appears that . . . the applicant has
20 exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A). To
21 exhaust state remedies, a petitioner must present each of his claims to the state’s highest court.
22 *James v. Borg*, 24 F.3d 20, 24 (9th Cir. 1993). *See also O’Sullivan v. Boerckel*, 526 U.S. 838,

01 845 (1999) (“Because the exhaustion doctrine is designed to give the state courts a full and fair
02 opportunity to resolve federal constitutional claims before those claims are presented to the federal
03 courts, [] state prisoners must give the state courts one full opportunity to resolve any
04 constitutional issues by invoking one complete round of the State’s established appellate review
05 process.”)

06 Here, petitioner was only very recently convicted and sentenced. He asserts that he began
07 the appeals process before his trial took place and concedes that review of his case remains
08 pending in state court.

09 Accordingly, because petitioner has not yet exhausted his state remedies, his habeas
10 petition is subject to dismissal without prejudice.¹ Petitioner is hereby ORDERED to show cause
11 why this petition should not be dismissed without prejudice within **thirty (30) days** of the date
12 of this Order. The Clerk is directed to send a copy of this Order to the Honorable John C.

14 ¹ The Court also notes other deficiencies in the proposed petition. First, petitioner failed
15 to name the correct respondent. A petitioner for habeas corpus relief must name the state officer
16 having custody of him or her as the respondent to the petition. *Rumsfeld v. Padilla*, 542 U.S. 426,
17 434-35 (2004); *Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). That
18 person typically is the warden of the facility in which the petitioner is incarcerated. *Id.* Failure to
19 name the petitioner’s custodian deprives federal courts of personal jurisdiction. *Stanley*, 21 F.3d
20 at 360. Here, petitioner names the City of Seattle as respondent. If petitioner were able to
21 establish exhaustion, he would have to name the proper respondent in order to pursue habeas relief
22 in this Court. Second, petitioner fails to clarify with specificity the various constitutional grounds
he pursues in this habeas petition. The Court cannot grant a writ of habeas corpus unless a
petitioner demonstrates that he is in custody in violation of federal law and that the highest state
court decision rejecting his grounds was either “contrary to, or involved an unreasonable
application of, clearly established Federal law, as determined by the Supreme Court of the United
States.” 28 U.S.C. § 2254(a) and (d)(1). Petitioner must prove that his custody violates the
Constitution, laws or treaties of the United States. 28 U.S.C. § 2254(a); *see also McKenzie v.*
McCormick, 27 F.3d 1415, 1418-19 (9th Cir. 1994). This issue is presumably complicated by the
fact that it does not appear that petitioner has yet exhausted his state remedies through an appeal
and/or a personal restraint petition.

01 Coughenour.

02 DATED this 5th day of August, 2008.

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04 Mary Alice Theiler
05 United States Magistrate Judge
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